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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/202,365	12/10/1998	RONALD P. LUITEN	SZ997-003	2812

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EXAMINER

NGUYEN, VAN KIM T

ART UNIT

PAPER NUMBER

2661

DATE MAILED: 02/27/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/202,365	LUIJTEN ET AL.	
	Examiner	Art Unit	
	Van Kim T. Nguyen	2661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 10 December 1998.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____    | 6) <input type="checkbox"/> Other:  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors. For example, claim 1 recites the limitation "the used bandwidth," but there is insufficient antecedent basis for this limitation in the claim. Claim 1 also recites, "if the point of time (TS) when said duration (ET) was stored, is not longer ago than a predetermined threshold time interval (THR) at said arbitrary point of time (GT)." If TS is a point of time, it does not make sense to compare to THR, a predetermined threshold time interval for determining which one is longer. Similarly errors are found with claims 2-18.

Correction is required.

In order to examine the case, Examiner will interpret the claim 1 as "Method for determining a used bandwidth (CCR)... and, if the time interval between the point of time (TS) when said duration (ET) was stored and said arbitrary point of time (GT), is not longer ago than a predetermined threshold time interval (THR)." Similar interpretation also applied to claims 2-18.

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***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamato (US 5,889,761), in view of Mishra et al (US 5,805,599).

As shown on Figures 3-12, Yamato discloses a method and means for determining a used bandwidth (Current Cell Rate) on a plurality of connections (21, 23, or 22, Figure 4) on which countable information-carrying units (cells) are transported, characterized in that the duration of an arrival period during which a predetermined number of countable information-carrying units is measured (13, Figure 3) and stored (32, Figure 10), (columns 1-4, especially column 3, lines 59-67 and column 4, lines 1-9).

Yamato also discloses a storing means (41, Figure 8; 32, Figure 10) storing the point of time when the number of the arriving units reached a predetermined number M, and a determination means (13, 131, or 132, Figure 3; and 37, Figure 10) determining the arrival period using the point of time when the number of arriving units reached the predetermined number M and the point of time when the number of arriving units reached the predetermined number M previously (columns 5-11, especially column 6, lines 12-19).

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Yamato also discloses a storing means for erasing or overwriting (37, Figure 10) the previous point of time, and the duration of the previous arrival period (columns 10-12, especially column 10, lines 17-67, and column 11, lines 1-9).

However, Yamato does not call for a predetermined threshold time interval (THR), or for it to be stored.

Yamato also does not call for a decision means using the point of time when the number of arriving units reached a predetermined number together with the arbitrary point of time and the predetermined threshold time interval to determine whether the stored duration at the arbitrary point of time is older or not older than the predetermined threshold interval.

Yamato also does not call for setting the used bandwidth at an arbitrary point of time to a predetermined number of countable information-carrying units if the time interval between the point of time when the duration was stored and the arbitrary point of time is not longer ago than a predetermined threshold time interval.

Yamato also does not call for measuring and storing the duration of the next arrival, and setting the used bandwidth to a predetermined number M of the units per the last-stored duration, if the time interval between the point of time when the last-stored duration was stored and the arbitrary point of time is not older than the predetermined threshold time interval.

As shown in Figure 1, Mishra teaches a predetermined threshold time interval (Switch\_Timeout\_Factor) and a storing means (50 or 70) to store it (column 8, lines 17-31).

Mishra also teaches a decision means (40, 50 or 60) using the point of time when the number of arriving units reached a predetermined number M together with the arbitrary point of time and the predetermined threshold time interval to determine whether the stored duration at the arbitrary point of time is older or not older than the predetermined threshold interval, and if it is not older, a definition means (40, 50 or 60) to set the used bandwidth at the arbitrary point of time to be a predetermined number of countable information-carrying units M (column 7-8, especially column 7, lines 1-52).

Mishra also teaches measuring and storing the duration of the next arrival, and setting the used bandwidth to a predetermined number M of the units per the last-stored duration, if the time interval between the point of time when the last-stored duration was stored and the arbitrary point of time is not older than the predetermined threshold time interval (columns 7-8, lines 1-31).

Although neither Yamato nor Mishra teaches setting the used bandwidth at an arbitrary point of time to be zero, if the time interval between the point of time when the arrival duration was stored and the arbitrary point of time is not older than the predetermined threshold time interval, Mishra does call for the used bandwidth to be set to the initial cell rate (ICR) in this case. Since ICR is just an arbitrary rate, it is obvious that it can be set to any value, e.g., zero.

Since it is highly desirable to fully utilize all available bandwidths in high-capacity networks such as ATM networks, it would have been obvious to one of ordinary skills in the art at the time the invention was made to combine Yamato's Method and System for

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Controlling Cell Transmission Rate in ATM Network and Mishra's Adaptive Channel Allocation System to increase network efficiency.


**Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Awdel et al (US 5,754,530), Flow Control of ABR Traffic in ATM Networks; Kalampoukas et al (US 5,675,576), Concession Control System and Method for Packet Switched Networks Providing Max-Min Fairness; and Soumiya et al (US 5,696,764), ATM Exchange for Monitoring Congestion and Allocating and Transmitting Bandwidth Guaranteed and Non-Bandwidth-Guaranteed Connection Calls.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Van Kim T. Nguyen whose telephone number is 703-305-7692. The examiner can normally be reached on 8:00 AM - 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas Olms can be reached on 703-305-4703. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9314 for regular communications and 703-872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-0377.

  
DAVID VINCENT  
PRIMARY EXAMINER

vtn  
February 19, 2002